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[Additional counsel appear on signature
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*Attorneys for Defendant and
Counterclaimant Apple Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

vs.

APPLE INC.,

Defendant, Counterclaimant.

No. 4:20-CV-05640-YGR-TSH

**STIPULATION AND [PROPOSED]
ORDER REGARDING EXPERT
DIRECT TESTIMONY**

Hon. Yvonne Gonzalez Rogers

1 WHEREAS, on March 30, 2021 the Court issued its Pretrial Order No. 3 (Dkt. 389);

2 WHEREAS, in Pretrial Order No. 3, the Court directed that “Epic Games Inc. shall serve,
3 but not file, its written direct testimony on Apple by **April 20, 2021**. Apple shall serve, but not
4 file, its written direct testimony on Epic Games by **April 23, 2021**. The parties shall then file and
5 serve the final written direct testimony by **Tuesday, April 27, 2021**”;

6 WHEREAS, in Pretrial Order No. 3, the Court directed that “[e]ach written testimony
7 submission shall bear the Exhibit marking ‘Ex. Expert [insert number]’ and repeat with
8 consecutive numbering”;

9 WHEREAS, in Pretrial Order No. 3, the Court directed the parties to “file one joint
10 stipulation requesting that the Court admit the exhibits for all written testimony so that they will
11 become part of the trial record. The stipulation shall be submitted with the written testimony
12 submissions. Further the list shall include the exhibit number, the name of the witness, the word
13 count and the summation of the collective word counts”;

14 WHEREAS, Epic Games Inc. served the written direct testimony of its experts on April
15 20, 2021, and Apple served the written direct testimony on of its experts on April 23, 2021;

16 WHEREAS, Epic Games Inc. will timely serve the written direct testimony of its rebuttal
17 experts on April 27, 2021, but Apple will not have time to review that rebuttal testimony before
18 this stipulation is due to be filed;

19 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties through
20 their respective counsel that, subject to the approval of the Court:

21 (1) the written direct testimony identified in the table below (Exs. Expert 1–12,
22 inclusive) is admitted, with the exception of the paragraphs specifically identified as not stipulated
23 to;

24 (2) the parties will file a further stipulation regarding the admission of (and any
25 objections to) Epic’s rebuttal written direct testimony by April 28, 2021; and
26
27

(3) each objecting party will file by April 28, 2021 a statement explaining the bases for its objections regarding the paragraphs specifically identified as not stipulated to, and each sponsoring party will file a responsive statement by 10:00 a.m. on April 30, 2021.

Witness	Exhibit No.	Paragraphs Not Stipulated To	Word Count
Epic's Written Direct Testimony			
Dr. David S. Evans	Ex. Expert 1	N/A	30,200
Ned S. Barnes, CPA	Ex. Expert 2	N/A	3,472
Peter E. Rossi, Ph.D.	Ex. Expert 3	N/A	4,596
Dr. Susan Athey	Ex. Expert 4	¶¶ 86–96	7,468
James W. Mickens, Ph.D	Ex. Expert 5	¶ 94	13,724
			Total: 59,460
Apple's Written Direct Testimony			
Lorin M. Hitt, Ph.D.	Ex. Expert 6	¶ 180; Figure 5	25,626
Francine LaFontaine, Ph.D.	Ex. Expert 7	N/A	11,718
Richard Schmalensee, Ph.D.	Ex. Expert 8	N/A	18,009
Daniel L. Rubinfeld	Ex. Expert 9	N/A	9,168
Dominique Hanssens, Ph.D.	Ex. Expert 10	N/A	8,109
Aviel D. Rubin, Ph.D.	Ex. Expert 11	¶¶ 7, 82, 84	16,253
James E. Malackowski	Ex. Expert 12	N/A	7,355
			Total: 96,238

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 Dated: April 27, 2021

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14
15 Dated: April 27, 2021

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1 **PURSUANT TO STIPULATION AND GOOD CAUSE APPEARING, IT IS SO**
2 **ORDERED.**

3
4 DATED: _____

5 HON. YVONNE GONZALEZ ROGERS
6 United States District Judge
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ECF SIGNATURE ATTESTATION

In accordance with Civil Local Rule 5-1, the filer of this document hereby attests that the concurrence of the filing of this document has been obtained from the other signatory hereto.

Dated: April 27, 2021

CRAVATH, SWAINE & MOORE LLP

By: /s/ Gary A. Bornstein

Gary A. Bornstein

*Attorneys for Plaintiff and
Counter-defendant Epic Games, Inc.*